Immunocept, LLC, et al v. Fulbright & Jaworski Doc. 3

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BY [illegible] DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IMMUNOCEPT, LLC, PATRICE ANNE LEE, AND JAMES REESE MATSON	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CAUSE NO. A050A334 SS
	§	
FULBRIGHT & JAWORSKI, LLP,	§	
	§	
Defendant.		

FULBRIGHT & JAWORSKI, LLP'S
ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES

TO THE HONORABLE JUDGE OF THIS COURT:

Fulbright & Jaworski, LLP ("Fulbright"), Defendant in the above-entitled and numbered cause, by and through its undersigned counsel, files this Original Answer and Affirmative Defenses ("Answer") to the Plaintiffs' First Amended Complaint ("Complaint").

1. Fulbright is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph (1) of the Complaint.

2. Fulbright is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph (2) of the Complaint.

3. Fulbright is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph (3) of the Complaint.

4. Fulbright admits the averments in paragraph (4) of the Complaint.

5. Fulbright admits the averments in paragraph (5) of the Complaint.

6. Fulbright admits the averments in paragraph (6) of the Complaint.

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7. Fulbright is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph (7) of the Complaint.

8. Fulbright is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph (8) of the Complaint.

9. Fulbright is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph (9) of the Complaint.

10. Fulbright is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph (10) of the Complaint.

11. Fulbright is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph (11) of the Complaint.

12. With respect to the averments in paragraph (12) of the Complaint, Fulbright admits that the Inventors contacted patent counsel at Fulbright in early 1993, retaining Fulbright to secure a patent for the Inventors' hemofiltration invention with the United States Patent Office. Fulbright admits that one or more of Benjamin Aaron Adler, Sally Brashears-Macatee, Ronald Bliss, and C. Richard Martin consulted with one or more of the Inventors regarding the technical aspects of the invention. Fulbright is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph (12) of the Complaint.

13. Fulbright admits the averments in paragraph (13) of the Complaint.

14. Fulbright is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph (14) of the Complaint.

15. Fulbright is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph (15) of the Complaint.

16. Fulbright is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph (16) of the Complaint.

17. With respect to the averments in paragraph (17) of the Complaint, Fulbright denies that its conduct fell below any applicable standard of care, and affirmatively asserts that Fulbright's legal work conformed to what reasonable attorneys would have done under the circumstances presented. Fulbright is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph (17) of the Complaint.

18. With respect to the averments in paragraph (18) of the Complaint, Fulbright denies that its conduct fell below any applicable standard of care, and affirmatively asserts that Fulbright's legal work conformed to what reasonable attorneys would have done under the circumstances presented. Fulbright is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph (18) of the Complaint.

19. Fulbright denies the averments in paragraph (19) of the Complaint.

20. With respect to the averments in paragraph (20) of the Complaint, Fulbright incorporates the preceding paragraphs of this Answer by reference.

21. Insofar as the allegations in paragraph (21) constitute conclusions of law, no response is required.

22. Fulbright denies the averments in paragraph (22) of the Complaint.

23. Fulbright denies the averments in paragraph (23) of the Complaint.

24. Fulbright denies the averments in paragraph (24) of the Complaint.

25. Fulbright denies the averments in paragraph (25) of the Complaint.

26. No response is required to paragraph (26) of the Complaint.

PRAYER FOR RELIEF

If any response be required to Plaintiffs' "Relief Requested," Fulbright denies that Plaintiffs are entitled to any judgment against Fulbright and specifically denies that Plaintiffs are entitled to any compensatory damages, any exemplary damages, costs of suit, pre- and post-judgment interest, or any other relief.

FIRST AFFIRMATIVE DEFENSE

The causes of action in the Complaint are barred, in whole or in part, by the applicable statutes of limitations.

SECOND AFFIRMATIVE DEFENSE

The causes of action in the Complaint fail to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs may have failed to exercise reasonable care and diligence to mitigate their alleged damages.

FOURTH AFFIRMATIVE DEFENSE

The causes of action in the Complaint are barred, in whole or in part, by the affirmative defenses of ratification, consent, release, waiver, estoppel, and/or laches.

FIFTH AFFIRMATIVE DEFENSE

Fulbright alleges that the Plaintiffs may have been negligent, legally responsible, or otherwise at fault for the damages alleged in the Complaint. Therefore, if the Plaintiffs suffered injuries attributable to Fulbright, which allegations are expressly denied, then Fulbright reserves its right to submit issues of assumption of the risk, comparative causation, comparative fault, contributory fault, and/or comparative responsibility against the other parties to this suit as allowed by the laws of the State of Texas and other applicable law.

SIXTH AFFIRMATIVE DEFENSE

Fulbright alleges that the evidence will show that the damages alleged in the Complaint, to the extent they can be proven, were proximately caused by the superseding and intervening acts or omissions of parties or entities other than Fulbright.

SEVENTH AFFIRMATIVE DEFENSE

Fulbright alleges that it satisfied all applicable legal or contractual duties of care.

EIGHTH AFFIRMATIVE DEFENSE

Fulbright alleges that the Plaintiffs, or some of them, lack capacity to bring some or all of the claims against Fulbright.

NINTH AFFIRMATIVE DEFENSE

Fulbright alleges that the Plaintiffs, or some of them, lack standing to bring some or all of the claims against Fulbright.

TENTH AFFIRMATIVE DEFENSE

Fulbright alleges that the Plaintiffs, or some of them, lack the contractual relationship or privity required to bring some or all of the claims against Fulbright.

ELEVENTH AFFIRMATIVE DEFENSE

Fulbright reserves the right to interpose further defenses to which it may be entitled as revealed by further proceedings.

Respectfully submitted,

By: ______________________________
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ATTORNEYS FOR DEFENDANT FULBRIGHT & JAWORSKI, LLP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served as shown below on counsel of record on June 10, 2005.

Via Certified Mail, Return-Receipt Certified
Michael P. Lynn, P.C.
Jeffrey M. Tillotson, P.C.
John D. Volney
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David J. Beck